

REMARKS

The Abstract has been rewritten.

Claims 6 to 8; 14 to 20 have been cancelled. Claims 9 to 13 have been amended. Claims 1 to 5 were previously canceled.

Claims 9 to 13 remain in the application. Of these claims, claim 9 is the sole independent apparatus claim.

Reexamination and reconsideration are respectfully requested in light of the amendments and the remarks that follow.

Independent claim 9 has been amended to define a structure prepared from a vertebral body having a cancellous bone volume. The structure comprises a cavity wholly within the vertebral body peripherally defined by a layer of cancellous bone that has been compressed to form a compressed bone region, a bone filling material in the cavity, and another region of substantially uncompressed cancellous bone occupying at least a portion of the remaining cancellous bone volume.

The Examiner has rejected the claims as originally filed under 35 U.S.C. § 101 as being directed to non-statutory subject matter (a human). The claims have been amended to define a structure prepared from a vertebral body, and are therefore believed to be directed to statutory subject matter. In this respect, the claims are similar in format to, e.g., issued claims 15, 30, and 31 of US 6,979,352 (copy attached), which define “a structure prepared from a natural fractured/tumorous/osteoporotic vertebral body ...”

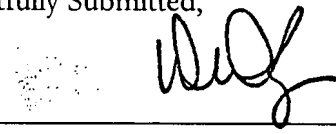
Claims 9 to 12 stand rejected as originally filed under 35 U.S.C. § 102(b) or 35 U.S.C. § 102(b) based upon Scholten et al (US 4,969,888), alone or in combination with Kuslich US 5,571,189 or Felt (US 6,306,117).

Scholten does not disclose a structure prepared from a vertebral body comprising a filling material occupying a cavity that is peripherally defined by a layer of cancellous bone that has been compressed to form a compressed bone region, the structure also comprising another region of substantially uncompressed cancellous bone occupying at least a portion of the remaining cancellous bone volume. Scholten discloses a structure that comprises a cavity for a filling material intended to occupy the entire cancellous bone volume, without leaving any region of cancellous bone uncompacted. Neither Kuslich nor Felt disclose a structure of compressed cancellous bone, nor a

structure with a cavity formed wholly within a vertebral body. Kuslich reams out (cuts away) the disc between vertebral bodies. Felt places curable materials in a mold.

The Examiner's attention is directed to three related applications commonly owned by the assignee of the instant application: (1) Application Serial No. 10/747,547, filed December 29, 2003, Group 3731 (Examiner J. Woo) (now United States Patent No. 6,981,981, copy attached); (2) Application Serial No. 10/747,558, filed December 29, 2003, Group 3731 (Examiner J. Woo) (Pending); and Application Serial No. 09/884,365, filed June 19, 2001, Group 3731 (Examiner J. Woo) (now United States Patent No. 7,044,954, copy attached).

Respectfully Submitted,

By 
Daniel D. Ryan, Reg. No. 29,243

RYAN KROMHOLZ & MANION, S.C.
Post Office Box 26618
Milwaukee, Wisconsin 53226
(262) 783 - 1300
Customer No.: 26308